

Digest of the Constitutional Law

by Minobe Tatsukichi

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Section III. Advisory Organ to the Emperor

The Privy Council is established as the advisory organ to the Emperor. The Privy Council being direct subordinate to the Emperor, is a deliberative body which will respond to the Emperor's consultation upon important affairs of the State. It was established in the 21st Year of Meiji 1885 (Ref Imperial Ordinance No. 22 -- 30th April 21th Year of Meiji 1885) and was made a necessary organ based upon the Constitution (In the Ordinance creating and regulating the Privy Council the words "Privy Council" is used and in the Constitutional Law it is called "Privy Counsellors". They are synonyms and mean a deliberative body)

The Privy Council is composed of a President, a vice-President and Counsellors (In the beginning there were 25 counsellors later the number was increased to 26 and in the 2nd Year of Taisho 1913 it was decreased to 24. The Ordinance says, besides the above, the chief secretaries and secretaries are component part but they are officials attached and do not constitute the deli-

berative body). The qualification for the election (of Councillors) is that the person should be more than 40 of age and a man of distinguished service and experience. Beside these each ministers of state shall have ex officio the right to attend and vote in the meeting. Sinno (sons of the Emperor) who is a major and resides in Tokyo shall attend the Privy Council Meeting (Imperial Ordinance 13th May 21st Year of Meiji 1898).

The Status of the Privy Councillors is that of the Officials of the state but in their function they hold double position of the state organ and Imperial Household organ. The limits of competence (of P.C.) as the Imperial Household organ are defined by the Imperial Household Law and the Imperial Household Ordinance creating and regulating the Privy Council.

(1) The limits of competence as the Imperial Household Organ

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(2) The limits of competence as the State Organ.

With respect to the pure affairs of state the Privy Council always gives its opinion in answer to the consultations of the Emperor only but has no authority to make a proposal of its own initiative. The question whether or not a certain decision passed in the Privy Council shall be adopted (by the Emperor T/N) is a matter for the State Minister to advise the Emperor about. Consultations with the Privy Council or omission thereof does not

affect the validity (T.N. of the acts of State) as the will of the state because the power of the Privy Council with regard to the affairs of State is exclusively defined by the Ordinance creating and regulating the Privy Council and the said Ordinance has no authority to define the conditions of the validity of the will of the State.

The following are matters defined in the said Ordinance as matters to be referred to the Privy Council for deliberation.

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It is the usual practice of the Privy Council to hold the meeting with the Emperor attending personally (Art. I the Ordinance). The Conference shall have attendance of more than ten Councillors and decision is taken by majority of vote. The Privy Council is allowed to deal only with the Cabinet and Ministers of different Departments. (on matters related to the Imperial Household the Minister of the Imperial Household shall be included) It is not allowed to correspond with or have other dealings with government offices other than those mentioned above such as the Imperial Diet, or with the people.

The meaning of (T.N. the provision) of the Ordinance (Article VIII) reading "it (T.N. Privy Council) shall not interfere with

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the executive" is that the Privy Council shall submit their opinion to the Emperor only and shall have no dealings with the people. The opinion adopted in the Privy Council shall be tendered by the President to the Emperor and it shall at the same time be given to the Prime Minister (Ordinance Art, 13)

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CERTIFICATE OF SOURCE

I hereby certify that the book hereto attached, written in Japanese by me, consisting of 530 pages and entitled "Digest of the Constitutional Law" is a book which was published in 1926 at Yuhikaku.

certified at Tokyo,
on this 28 day of August, 1947

Minohe Tatsukichi
(Seal)

I hereby certify that the above signature and seal were affixed hereto in the presence of the Witness.

at the same place,
on the same date

Witness:

Mori Yoichi
(seal)

東京舊肆有斐園

(大正十五年二月二十八日訂正三版)

二九五頁
三〇〇頁

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樞密院ハ議長一人副議長一人及顧問官若干名（始ハ二十五人ノ定員ナリシ
 モ後ニ二十八人ニ増員シ大正二年更ニ二十四人ニ減ゼリ）官制ニハ此外書記
 官長及書記官ヲモ樞密院ヲ組織スルモノト爲ヒリト雖モ此審ハ陸海軍官タ
 ルニ止マリ合議体ノ一翼ヲ爲スモノニ非ズ一ヲ以テ組織ス其任用資格ハ年
 齡四十歳以上ナルコトヲ要件トシ、元勳線達ノ人ヲ選ブ、此外各閣務大臣

ハ職務上當然顧問官トシテ議席ニ列シ表決ニ加ハルノ權利ヲ有ス、在京ノ
成年以上ノ各親王モ亦樞密院會議ニ班列スヘキ勅令
身分ニ於テハ國ノ官吏ナリト雖モ其職務ニ於テハ國家機關タルト共ニ皇室
ノ機關タルニ重ノ地位ヲ有ス皇室ノ機關トシテノ權限ハ皇室典範及皇室令
ニ依リテ定メラレ、國家ノ機關トシテノ權限ハ樞密院官制ニ依リテ定メラ
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ハ皇室機關トシテノ權限：……中略……
ハ國家機關トシテノ權限。純然タル國家ニ屬シテハ樞密院ハ常ニ唯諮詢ニ

應フルニ止マリ自ラ發議ヲ爲スノ權ナク其決議ノ採用ヒラルル否ヤハ一
ニ國務大臣ノ輔弼ニ依ル其諮詢ヲ經ルヤ否ヤハ又國家ノ意思トシテノ效
力ニ影響スルモノニ非ズ何トナレバ國務ニ關スル樞密院ノ權限ハ専ラ樞
密院官制ニ依リ定マリ而シテ官制ハ國家意思ノ效力要件ヲ定ムベキカヲ有
スルモノ非レバナリ
樞密院官制ニ依リ樞密院ノ職ニ付ヒラルベキモノトヒラルル事項ハ左ノ
如シ

……中略……

樞密院ハ天皇親臨シテ會議ヲ開クヲ常則トス（官制一條）其會議ハ顧問
官十人以上ノ出席アルコトヲ要シ出席者ノ過半數ニ依リテ決ス樞密院ハ
樞内閣及各省大臣一皇室ニ關スル事項ニ付テハ宮内大臣ヲ含ムト交渉
スルヲ得ルノミ其他ノ官廳帝國議會又ハ人民トノ間ニ文書ヲ往復シ又ハ
其他ノ交渉ヲ爲スコトヲ得ズ官制ニ樞密院ハ「施政ニ干與スルコトナシ」
（第八條）ト曰ヘルハ樞密院カ唯天皇ニ意見ヲ上奏スルニ止マリ國民ニ
對シテ直接ノ交渉ヲ有スルモノニ兆ルコトヲ意味ス樞密院ノ議決シタル
意見ハ議長ヨリ天皇ニ上奏シ同時ニ之ヲ內閣總理大臣ニ通報ス（官制一
三條）

以上

文書成立ニ關スル證明書

本書ニ添付セラレタル日本語ニテ書カレ五八〇頁ヨリ成ル美濃部達吉著
意法操要ト題スル大正十五年五月三十日發行ノ書籍ハ自分ノ東京帝國大
學教授時代ニ著作シ有斐閣ヲシテ發行ヒシノタル書籍ノ一ナルコトヲ證
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昭和二十二年八月二十八日

於東京都北多摩郡武蔵野町

吉祥寺九五二自宅

美濃部 達 吉

同日於同所

右署名捺印ハ自分ノ面前ニ於テ爲サレタルモノナルコトヲ證明ス

立會人

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